

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

PAUL CASTO,

Plaintiff,

v.

**Civil Action No. 1:23CV8
(Judge Kleeh)**

**LAURA WHALEY and
BARBARA BERKERY,**

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 15] AND
DISMISSING ACTION WITHOUT PREJUDICE**

On January 18, 2023, the pro se Plaintiff, Paul Casto ("Plaintiff"), filed a Complaint against Laura Whaley and Barbara Berkery ("Defendants"). ECF No. 1. The Court referred the action to United States Magistrate Judge Michael J. Alois (the "Magistrate Judge") for review. On February 1, 2023, the Magistrate Judge entered a Report and Recommendation ("R&R"), recommending that the Court dismiss, without prejudice, Plaintiff's complaint for lack of subject matter jurisdiction, and deny Plaintiff's motion for injunctive relief. ECF No. 15.

The R&R informed the parties that they had fourteen (14) days from the date of service of the R&R to file "written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection." It further warned them that the "[f]ailure to timely file objections . . . will result in a waiver of the right to appeal from a judgment of this

**ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 15] AND
DISMISSING ACTION WITHOUT PREJUDICE**

Court based upon such Report and Recommendation." Plaintiff accepted service of the R&R on February 6, 2023. ECF No. 16. To date, no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b) (1) (C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [ECF No. 15]. Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction. ECF No. 1. Plaintiff's motion [ECF No. 14] is **DENIED**. This action is **DISMISSED WITHOUT PREJUDICE** and **STRICKEN** from the Court's active docket.

It is so **ORDERED**.

**ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 15] AND
DISMISSING ACTION WITHOUT PREJUDICE**

The Clerk is directed to transmit copies of this Order to counsel of record via email and to the pro se Plaintiff via certified mail, return receipt requested.

DATED: February 27, 2023

Tom S Kline

THOMAS S. KLEEH, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA